

# STAFF REPORT

**Case No. LVRZ 2015-0001**

**Keena Subdivision – Rezoning Concept Plan & Proffer Amendment**

November 12, 2015



**TOWN OF LOVETTSVILLE**



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Planner/Zoning Administrator

### **Summary:**

The Town of Lovettsville has received an application from property owners George C. Keena, Timothy E. Keena and James M. Keena for approval of an amendment to the concept plan and proffers previously approved by the Town Council on December 13, 2007 for rezoning the applicants' properties from the R-1 Residential District to the Planned Infill Development District (PIDD). The concept plan amendment proposes the substitution of five (5) single-family detached lots for the eight (8) duplex lots previously approved on the north side of Frye Court, elimination of alleyways internal to the subdivision, and elimination of one additional building lot for the purpose of installing a stormwater management pond in that location. The requested proffer amendment deletes the proffered construction of a sidewalk (by the applicants) on the south side of East Broad Way in front of the owners' properties and deletes the proffer of a payment to the Town in lieu of constructing a sidewalk in front of the owners' property at 11 South Loudoun Street (Proffer #3 and #4; see pages 3-4 below). The requested proffer amendment adds a proffer for the installation of improvements and upgrades to the Frye Court sanitary sewer pump station. One of the subject parcels is located at 11 South Loudoun Street and is further identified as Loudoun County Parcel Identification (PARID) Number 370-40-9427; the remaining parcels that are the subject of this request are generally bounded by Frye Court, East Broad Way and Locust Street and are further identified as Loudoun County Parcel Identification (PARID) Numbers 334-45-3018, 334-45-3945, and 334-45-5853.

### **Review Process:**

The procedure for reviewing a request by a property owner for approval of an amendment to a rezoning concept plan and statement of proffers previously approved is the same as approval of a zoning amendment generally, and is set forth in Section 42-34 of the Town Code:

1. The owner submits an application for a zoning map amendment on a standard form provided by the Town and pays the required application fee.
2. The owner submits proposed proffered conditions or amended proffered conditions, including any attachments, in writing in advance of the public hearing before the Town Council.
3. Upon receipt of the application for concept plan and/or proffer amendment, the Zoning Administrator reviews the application and required documents for completeness.
4. Upon receipt of a complete application, the Zoning Administrator sets the time and place for the public hearing before the Planning Commission and prepares the advertisement in the local newspaper to notify the public of the date, time, subject and location of the hearing. The applicants are responsible for notifying all adjacent property owners of the same in writing at least five (5) days prior to the public hearing.
5. The Planning Commission and Town Council hold separate public hearings or a joint public hearing on the owner's application to amend the concept plan and/or proffered conditions.
6. The Planning Commission forwards to Town Council its recommendation and a statement stating the reasons for the recommendation.
7. The Town Council may approve or deny the application as submitted, rezone to a classification other than that requested by the applicant, or rezone only a portion of the

area proposed for rezoning in the original petition. If denied, no “substantially identical” petition concerning any or all of the same property shall be filed by the applicants within 12 months of the date of denial by the Town Council.

In addition, a request to amend the approved concept plan in the Planned Infill Development District must adhere to the following additional requirement:

1. The applicants shall prepare a concept plan or amended concept plan as part of the rezoning application that includes all information required by Sec. 42-239(c) of the zoning ordinance.

### **Prior Approvals:**

The project has been under consideration for over thirteen (13) years. Staff has researched background information on the Keena Subdivision and identified the following approvals related to this project:

1. A Conditional Use Permit (CUP) was approved by the Town Council on October 24, 2002 to authorize an initial subdivision of the Keena Tract (PARID 334-45-3018) for the purpose of creating individual lots for three (3) existing single-family dwellings located on E. Broad Way. The conditions attached to this approval were:

(1) The minimum lot area for Lot 1 (Lot 3 in the current application) was modified to 6,665 square feet.<sup>1</sup>

(2) No further reduction in the front yard setback shall be permitted for Lots 1 and 2 (Lots 3 and 4).

(3) Required side yard setbacks for Lots 1, 2 and 3 (Lots 3, 4, and 5 in the current application) shall be established based upon the actual dimensions from the side lot line to the nearest point of the existing structure and shall not be less than 3.7 feet to the principal structure and not less than 2.8 feet for accessory buildings.<sup>2</sup>



**Figure 1: The area between the houses located at 38 E. Broad Way (left) and 36 E. Broad Way (right) where a new property line will be drawn.**

<sup>1</sup> The size of this lot was modified further upon approval of the preliminary subdivision plat (6,360 square feet).

<sup>2</sup> The 3.7-foot setback was established for the house located at 38 E. Broad Way, between the northern edge of the structure and the property boundary with 36 E. Broad Way. The 2.8-foot setback was established for the small accessory building located in front of 42 E. Broad Way.

2. The preliminary plat of subdivision for a portion of the Keena Tract was conditionally approved by the Planning Commission on June 2, 2004, subject to ten (10) conditions.
3. An amendment to the zoning ordinance, initiated by the applicant, was approved on January 6, 2005 in order to create a provision authorizing the issuance of a conditional use permit (CUP) for a large lot subdivision containing fewer than 25 parcels in the R-1 Residential District without requiring the provision of common open space.
4. A Conditional Use Permit (CUP) was approved by the Town Council on April 28, 2005 to authorize modification to the previously-approved subdivision plat in order to create a large lot subdivision in the R-1 Residential Zoning District having an average lot size of 12,000 square feet, subject to two (2) conditions.
5. The modified preliminary plat of subdivision for the Keena Tract was conditionally approved by the Planning Commission on June 1, 2005, subject to six (6) conditions.
6. The zoning map amendment rezoning the property from R-1 Residential District to the Planned Infill Development District (PIDDD) was approved by the Town Council, with the following proffered conditions, on December 13, 2007:
  - a. Subject to final design to accommodate engineering, the Subject Property will be developed to be in substantial conformance with Keena Subdivision Zoning Map Amendment and Concept Plan Amendment dated November 2006, prepared by Mark W. Jeffries, attached hereto and made part of these Proffers, as Exhibit A. The applicant reserves the right and shall be permitted to adjust the location of the lot lines, street alignments, improvements and landscaping depicted on the Concept Development Plan and Landscape Plan as may be required to accommodate and meet the requirements of the Virginia Department of Transportation or Town, final engineering considerations as determined during site plan or subdivision review.
  - b. Applicant will repair Frye Court and will have Frye Court accepted by the Virginia Department of Transportation for maintenance as part of the public improvements constructed upon development of the subject property.
  - c. Applicant will construct a sidewalk along Broad Way in front of house numbers #36A, #38, #40, #42 [East] Broad Way (lots #1, #2, #3 and #29) using design and construction standards developed and approved by the Town of Lovettsville.
  - d. Applicant will contribute \$40.31 per linear foot for frontage improvements along 11 S. Loudoun Street (lots #31, #32, #33) to be paid not later than issuance of the first zoning permit for construction of a dwelling on any of the Subject Property.

7. A preliminary subdivision plat was approved by the Planning Commission on June 6, 2012 consisting of 27 lots (8 duplex and 19 single-family lots). The subdivision also created 6 separate lots for the 6 existing single-family dwellings owned by the applicants on E. Broad Way, Locust Street, and S. Loudoun Street.

If this application is approved, the applicants will be required to re-submit a modified preliminary subdivision plat.

### **Existing Conditions:**

The subject properties consist of four (4) separate lots of record. The largest parcel (PARID 334-45-3018) commonly referred to as the Keena Tract consists of a large, open field bounded by Frye Court to the south, East Broad Way to the east, and Locust Street to the north. This large parcel includes three (3) single-family homes (38-42 E. Broad Way) on the part of the property that abuts that street. The three smaller parcels contain the residences at 36 E. Broad Way, 11 S. Loudoun Street, and 5 Locust Street.

The topography of the site is generally flat but slopes slightly downhill from north to south such that the lowest elevation is near the southwest corner of the tract (near 27 Frye Court). Stormwater from the tract drains to a raised inlet at this location before flowing beneath the cul-de-sac to an outfall near the southwest corner of 21 Frye Court, which discharges to a channel running southwest across the future community park property (owned by Loudoun County). Town water mains are located in the vicinity of the property along E. Broad Way, Frye Court and Locust Street. The sanitary sewer main on Frye Court is the only force main in the Town. The force main is controlled by a pump station located directly southeast of the cul-de-sac, which was designed to be a temporary facility when the Lovettsville Manor Subdivision was constructed in the early 1990s. Gravity sewer lines are located on E. Broad Way and Locust Street adjacent to the subject parcels.



**Figure 2: The sanitary sewer pump station located near the end of Frye Court. The access cover was recently upgraded by the Town.**

### **Proposed Conditions:**

The major characteristics of the proposed development, based on the plans and exhibits prepared and submitted by the applicants, are discussed and analyzed below.

### **Lots and Uses:**

The three (4) existing parcels (6.93 acres) that are the subject of the proposed proffer/concept plan amendment application are proposed to be further subdivided in the future in order to



create twenty-nine (29) single-family lots for a total density of 4.18 units per acre. This is a reduction in the density authorized by the prior approvals of the rezoning concept plan (5.26 du/acre) and preliminary subdivision plat (4.6 du/acre). Single-family dwellings are permitted as a by-right use in the PIDD provided the lots are at least 7,000 square feet in area, 60 feet in width, and have a maximum length to width ratio of 3.5 to 1. All of the proposed residential lots appear to meet the minimum lot size and width requirements of the zoning ordinance, with the exception of Lot 3 (see explanation above under “Prior Approvals”). The precise dimensions of the lots and layout of the subdivision will be subject to future review as part of the subdivision review process.

Six (6) of the twenty-nine (29) lots proposed were intended to create smaller, separate lots for existing single-family homes. Four (4) such lots will be created on E. Broad Way for four (4) existing single-family dwellings owned by the applicants. Vehicular access to two (2) of these lots (Lots 3 & 4) will be to the rear of the lots from Pennsylvania Avenue; access to the other two (Lots 1 & 5) will be from E. Broad Way. One new lot will be created on Locust Street (Lot 20) for the existing single-family dwelling at 5 Locust Street; and a new lot (Lot 27) will be created on S. Loudoun Street for the single-family dwelling at 11 S. Loudoun Street.

*Comment:* Staff believes the restrictions on minimum lot area and setbacks established upon approval of the conditional use permit (CUP) in 2002 need to be referenced in the approval of the rezoning concept plan and proffer amendment. This will prevent further modification to these requirements upon future plan/plat submissions.

#### Buildings:

The setback requirements for single-family detached dwellings in the PIDD are as follows:

- Front yard: Minimum 20 feet; maximum 40 feet
- Side yard: Minimum 6 feet
- Rear yard: Minimum 25 feet

These setbacks were modified as part of the approval of the conditional use permit (CUP) in 2002 for two structures located in the project area: a small accessory building located in front of 42 E. Broad Way and the principal dwelling located at 38 E. Broad Way. The required side yard setbacks were reduced to 2.8 and 3.7 feet, respectively, for these two structures. These setbacks are enforceable at the time of preliminary plat approval for the subdivision.

One proposed change to the previously-approved concept plan, involving the elimination of alleyways internal to the subdivision, has implications for building form and the appearance of single-family homes in the Keena Subdivision. By eliminating the two alleys shown on the preliminary plat (Richey Alley and Spotter Post Alley), fewer of the lots will be able to accommodate side- or rear-facing garages. As a result, the “neo-traditional” appearances of the homes on these lots will be eliminated, with front-facing garages predominating throughout the subdivision. The exceptions, according to the response letter from the applicants’ design engineer dated August 25, 2015, are Lots 6, 10, 14, 17, 24, 28 and 29 on which the neo-traditional “option” will be preserved. Lots 6, 10, 14, 17 and 24 are considered corner lots with

the possibility of primary access via side-facing driveways and garages; Lots 28 and 29 are double-frontage lots with the possibility of rear access via the secondary street (Locust Street, based on the preliminary plat).

With neo-traditional buildings, the garage typically faces a side or rear street or alleyway, whether in an attached configuration in which the garage is considered part of the principal dwelling or in a detached building that is physically separate from the residence but may be connected by a covered or uncovered pedestrian “breezeway” or walkway. Planners typically prefer side- or rear-facing garages because they minimize the street presence of garage doors, potential for blocking of the public sidewalk, and reinforce the unique identity of each home by allowing architectural elements that provide variety in each building style and configuration (i.e. porches, doors, windows, shutters, dormers, etc.) to stand out when viewed from the public street. Housing developers and buyers, however, sometimes express a preference for homes having garages that do not require inhabitants to walk across an uncovered area in inclement weather to reach an exterior door to the main structure. The question of usable open space on small lots has also been raised; rear-facing garages like those in Kingsridge and New Town Meadows tend to take up a significant portion of the rear yard, limiting the area available for a decks, patios, and play areas.

*Comment:* Staff advises that the applicants proffer the construction of side-loaded garages on Lots 6, 10, 14, 17 and 24 and rear-loaded garages on Lots 28 and 29. This will ensure the diversity of building types in this subdivision and prevent the developer and/or builder from optioning out completely of constructing side- and rear-facing garages on the lots in question. This also reduces the number of residential driveway entrances to Locust Street and Frye Court.

#### Parking:

The off-street parking requirement for single-family detached dwellings in residential zoning districts is two (2) parking spaces per dwelling unit. The preliminary plat approved in 2012 showed the provision of three (3) off-street parking spaces for each single-family dwelling unit and two (2) off-street spaces for each duplex dwelling unit. The conditional use permit (CUP) approved for the microbrewery in 2012 required eight (8) off-street spaces, which are located in the paved parking lot behind the brewpub building.<sup>3</sup> In addition, a condition of the permit requires five (5) additional off-site parking spaces for employees within 500 feet of the property. Presently, employees park in a small (22' X 65'), roped-off gravel area located behind the main parking lot with enough space for perhaps 7 or 8 vehicles. This temporary overflow parking will be eliminated by the extension of E. Pennsylvania Avenue and creation of Lot 6. However, the applicants' engineer estimates that as many as ten (10) on-street parking spaces will be provided along the new section of E. Pennsylvania Avenue, which can provide overflow parking for patrons of the brewpub during events as well as the residents of that street. These on-street parking spaces, however, may not meet the conditions of the permit issued for the microbrewery since Condition #13 appears to require *dedicated* [emphasis added] employee parking within

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<sup>3</sup> The off-street parking requirement for restaurants is 1 parking space for every four (4) people based on the maximum occupancy load, or approximately 28 spaces (max. occupancy = 110).

500 feet of the brewery through execution of a shared parking agreement with an adjoining property owner.<sup>4</sup>

*Comment:* Staff advises that the applicants use Lot 2 for employee parking at the brewpub, as well as for overflow parking for patrons, rather than as a single-family lot. A parking license agreement similar to the one required for the Town Center Commercial could be recorded with the lot. The agreement would need to specify that if the use of the brewpub building is ever changed to one that requires 8 (or fewer) parking spaces currently provided in the paved parking lot behind the building, the Town Council could authorize termination of the agreement and elimination of the temporary parking lot.

### Transportation:

East Pennsylvania Avenue is classified by VDOT as an urban local street. The proposed extension of E. Pennsylvania Avenue and Stone Jail Street are both 28 feet in width (curb face to curb face) located within a right-of-way 42 feet in width. As such, on-street parking will be restricted to one side of the street only in order to allow two vehicles to pass one another within the travel way. The minimum width of curb-and-gutter subdivision streets designed to handle less than 400 vehicles per day with parking on only one side of the street is 24 feet.<sup>5</sup> Sidewalks are currently proposed on only one side of each street. Section 30-156 of the Subdivision Ordinance requires that sidewalks be built on both sides of the street, but prior approval of the preliminary plat by the Planning Commission included a modification to this requirement. Adding a sidewalk to the other side of the street (opposite of where they are currently proposed) would necessitate widening the width of the right-of-way on that side by approximately 3-4 feet. The applicants are responsible for constructing a sidewalk on only one side of an existing street, that is, the side where their development is taking place. Thus, the applicants are only required to construct a sidewalk and curb and gutter on one side of Locust Street. Frye Court currently has a sidewalk on the applicants' side of the street; however, the sidewalk has settled badly in several places and needs to be repaired or replaced.



**Figure 3: The sidewalk on Frye Court has collapsed around this stormwater inlet and will need to be replaced as part of the improvements to that street.**

The applicants originally proffered the construction of a sidewalk on E. Broad Way on the side of the street where his properties are located. However, the final design of the E. Broad Way Streetscape Project relieved the applicants of the need to install as sidewalk

<sup>4</sup> Presumably, a shared parking agreement would be unnecessary if one of the applicant's properties were used for this purpose.

<sup>5</sup> Geometric Design Standards for Residential and Mixed-Use Subdivision Streets (GS-SSAR), Curb and Gutter Section, VDOT Subdivision Street Design Guide.



along the southwest side of the street since the project involved a sidewalk on the opposite side only. The reason for this appears to be the lack of sufficient space on the southwest side of the street for sidewalks, lighting, trees and associated streetscape improvements in addition to the existing overhead electric lines and poles. Instead, construction on the applicants' side of the street mostly involves the installation of curb and gutter, driveway aprons, new water/sewer laterals and stormwater improvements.

The applicants also originally proffered a cash payment to the Town in the amount of \$40.31 per linear foot in lieu of constructing a sidewalk in front of the applicants' properties on S. Loudoun Street. This proffer was based on the idea that the Town would undertake a streetscape improvement project on S. Loudoun Street sometime in the foreseeable future. Staff estimates that the proffer is worth approximately \$12,657.34 (314 feet x \$40.31 = \$12,657.34).

*Comment:* The Town's subdivision ordinance requires sidewalks on both sides of public streets within a proposed subdivision with the exception of existing streets (i.e. Locust Street and Frye Court). The rights-of-way for E. Pennsylvania Avenue and Stone Jail Street would need to be widened on the opposite side of the street from where the sidewalks are currently proposed in order to meet this requirement. However, previous approvals have permitted sidewalks on only one side of the street through authorization of a modification (i.e. waiver) of this ordinance requirement. A similar modification would also need to be authorized by the Planning Commission upon approval of the preliminary plat in order to permit sidewalks on only one side of the street.

In the opinion of staff, sidewalks are more necessary on E. Pennsylvania Avenue than Stone Jail Street since patrons of the brewpub are more likely to park on that street to walk to that establishment and, therefore, need to have a safe path in order to get from their cars to the rear entrance of the building. Providing sidewalks on both sides of the street enables customers to walk on the side of the street where their cars are parked without having to cross the street multiple times (or walk in the street) in order to access the brewpub. Widening the public street right-of-way for the purpose of constructing a sidewalk on the east side of E. Pennsylvania Avenue may reduce the area of Lot 2 below the minimum lot size (7,000 sq. ft.) since presently this lot is only 7,057 square feet. If this is true, the remaining area of Lot 2 could be added to the brewpub lot in order to create a larger parcel containing additional area for permanent off-street parking.

#### Public Utilities:

The project proposes the installation of new water mains on the E. Pennsylvania Avenue and Stone Jail Street to tie into the existing mains on Frye Court and Locust Street. Connections would be made to the street intersections along with shut-off valves in order to create a loop. The plans also appear to show the installation of one new hydrant on each of these two streets. The new lots on S. Loudoun Street and E. Broad Way would be served by service lines that tie into the existing water mains located along these streets.

Sanitary sewer mains will be installed on E. Pennsylvania Avenue and Stone Jail Street in the locations shown on the concept plan, terminating at manholes to be installed near the southern corners of Lots 2 and 16, respectively. These sanitary sewer mains will connect to the Frye Court force main and pump station. Based on the preliminary plat, it appears that Lots 2, 7, 8 and 9 on E. Pennsylvania Avenue and Lots 15, 16, 21, 22 and 23 on Stone Jail Street will connect to the force main, in addition to Lots 10 through 14 on Frye Court (14 lots total). The remaining lots will connect to existing gravity sewer mains on Locust Street, S. Loudoun Street, and E. Broad Way (15 lots total). The applicants have not yet conducted a preliminary engineering study to determine the adequacy of the force main and pump station to handle the additional flow, although the applicants have proffered to analyze the pump station to determine existing wet well capacity, pumping rate, and force main capacity. The applicants have also proffered to undertake improvements to the pump station as necessary to (1) create additional capacity for the fourteen (14) additional lots that will connect to the system, and (2) may be necessary to meet Town standards, including the addition of standby generation, automatic dialing alarm system and suitable controls for the back-up power system, alarm and pump operation.



**Figure 4: The Frye Court pump station currently lacks back-up power (automatic or otherwise) or an automatic dialing alarm system.**

The applicants have also proffered to undertake improvements to the pump station as necessary to (1) create additional capacity for the fourteen (14) additional lots that will connect to the system, and (2) may be necessary to meet Town standards, including the addition of standby generation, automatic dialing alarm system and suitable controls for the back-up power system, alarm and pump operation.

The applicants propose to expand the stormwater management system in this area to handle the additional runoff generated by the development. In addition to stormwater pipes on E. Pennsylvania Avenue and Stone Jail Street, the applicants will install inlets and pipes (in an easement) along the rear of Lots 6 through 9 and between Lots 11 and 12. This system will connect to the Frye Court system and discharge to a new stormwater management pond located next to 27 Frye Court. The new stormwater system along Stone Jail Street will be extended to Locust Street to handle drainage from the new lots on S. Loudoun Street and improve stormwater management in this area.

The water and sanitary sewer systems proposed by the applicants will be reviewed in greater detail by the Town and Loudoun Water during review of the preliminary plat and construction drawings for the subdivision. All such facilities must meet applicable Town and Loudoun Water standards. The stormwater management facilities will be reviewed by Loudoun County and the Town's engineering consultant and must meet applicable state and local standards.

*Comment:* The proffered addition of "standby generation" is not the same as a commitment to install "*automatic* [emphasis added] back-up power for power outages" as requested by staff in the letter dated August 18, 2015. Staff believes this language needs to be tightened so that it does not require installation of a generator only but also installation of the controls and switch

necessary to allow the backup generator to turn on automatically in the event of a power outage.

### Frye Court Service District

In 1991, the Town entered into an agreement with the developers of the Lovettsville Manor Subdivision regarding the installation of a temporary pump station to serve the fourteen (14) duplex lots on Frye Court (attached). The agreement divided responsibility for constructing and maintaining the facility between the developer and Town, respectively, although the developer was responsible for reimbursing the Town for costs incurred for carrying out required inspections and minor repairs out of an escrow account created expressly for that purpose. If the maintenance costs exceeded the amount the escrow account, the Town was authorized to charge a fee to each of the individual property owners in order to recover its repair costs. The agreement was required to be referenced in the deeds recorded for each of the individual duplex lots and would “run with the land.”

What happened in the years following the construction of the duplexes is not entirely certain; however, what is known is that at some point between 1991 and 2002 the developer went bankrupt. In 2002, the Town adopted an ordinance creating the Frye Court Service District (attached) in order to establish an alternative source of funding for maintaining the pump station. The ordinance lists each property (by parcel number) included in the district and levies an additional real estate tax on those properties in order fund Town inspection and maintenance activities. Properties in the district currently pay an additional 27.5¢ per \$100 of assessed real estate value. Staff is unaware if this tax rate has remain constant or been raised by the Council in the years since its creation. The Town has used this money to fund regular maintenance activities, including upgrades to the manhole cover and pump.

*Comment:* The parcels in the Keena subdivision that will connect to the pump station will need to be added to the Frye Court Service District at such time as the lots are recorded in order to pay for the expense (to the Town) of maintaining the facility.

### Streetlights



**Figure 5: The Dominion Virginia Power Cutoff Colonial Luminaire.**

Streetlights will be required at street intersections as with prior subdivisions approved in the Town. The specific streetlight to be installed will likely be the standard residential Dominion Cutoff Colonial luminaire, which is a full cutoff streetlight that complies with zoning and subdivision ordinance requirements aimed at minimizing glare. Streetlights are not planned as part of the E. Broad Way Streetscape Project on the side of the street where the applicants' properties are located; however, three (3) street lights will be installed on the opposite side of the street across from the applicants' properties, including two (2) directly across from properties that are the subject of this concept plan/proffer amendment request. These streetlights provide coverage for the

entire street right-of-way including the side where the applicants' properties are located.

*Comment:* Town staff believes that purchase and installation by the applicant of two (2) of the streetlights proposed as part of the E. Broad Way Streetscape Project is a reasonable alternative for installing sidewalks on the southwest side of the street given that the Town's project has relieved the applicants of the need to do so. The two streetlights are located across from properties that are the subject of the current request (36 and 42 E. Broad). Staff estimates that the cost per streetlight is \$5,781.25, which does not include the cost of the concrete foundations (to be installed by the Town).

#### Landscaping, Buffering and Screening:

The requirements for landscaping, buffering and screening (Article X) in the zoning ordinance will be applied upon submittal of construction drawings for the project.

#### Comprehensive Plan:

The proposed proffer and concept plan amendment is consistent with the following policies of the 2011 Comprehensive Plan:

1. The area of Town where the applicants' properties are located is planned for medium-density residential use (no more than 6 dwelling units per acre). The proposed density associated with the applicants' requested concept plan amendment is therefore consistent with the Land Use Plan.
2. Road network improvements are planned to increase the safety and convenience of vehicular travel throughout the Town and provide necessary connections to the surrounding area. The major planned transportation improvements include Pennsylvania Avenue extended between S. Locust Street and Frye Court.

#### Staff Recommendation to the Planning Commission:

At the public hearing on October 7, 2015, staff recommended that the Planning Commission forward the application to the Town Council with a formal recommendation of approval, provided the following changes are made to the application as submitted:

1. The applicants propose and proffer a timetable for submittal and/or approval of the preliminary plat, construction drawings, final plat, start of construction, and/or construction of proffered improvements in order to ensure that initiation and completion of the project moves forward in more timely and predictable manner than has been the case historically;

***Staff Analysis:*** *The purpose of this recommendation is to encourage the applicant to move forward with the submission of a preliminary plat and construction drawings for the subdivision in order to provide certainty to the Town that anticipated revenues will materialize and proffered improvements constructed within a reasonable timeframe. Submission and approval of construction drawings decreases the likelihood that the*

*applicants will submit future applications to amend fundamental features of the development due to the considerable time and expense involved. The applicant has been unwilling to proffer a timetable of any sort, instead pointing out at the public hearing that the Virginia Code prescribes various timetables regarding the submission of plats and plans. The Planning Commission discussed this recommendation with the applicant in general terms only, and never discussed specific timetables pertaining to submittal or approval of plats, plans, or construction of improvements in the subdivision.*

2. The conditions attached to the approval of the conditional use permit (CUP) issued by the Town Council on October 24, 2002 shall remain in force and not be further modified by the applicants as part of the development of the applicants' properties;

**Staff Analysis:** *The applicant has indicated no objection to this recommendation. The purpose of this recommendation involves the fact that the preliminary plat approved in 2012 reduced the area of one of the lots below the minimum lot area prescribed by one of the conditions of the 2002 CUP approval. Reference to the CUP conditions can be inserted into the ordinance approving the application.*

3. The proffers and concept plan shall be modified to provide dedicated off-street parking for employees of the brewpub as well as additional off-street parking for patrons on proposed Lot #2 in accordance with Condition #13 of the conditional use permit (CUP) LVCU 2012-002 approved by Ordinance 2012-06-0004 on December 20, 2012, provided no shared parking agreement shall be required as long as the applicants remain the owners of the two subject parcels, and provided further that the number of off-street parking spaces provided on Lot 2 shall not be reduced without prior authorization of the Town Council;

**Staff Analysis:** *The Planning Commission requested, and the applicant subsequently submitted, a sketch plan showing the provision of eight (8) parking spaces on proposed Lot 2 for use by the brewpub. The applicant and Planning Commission discussed the need to develop a parking license agreement or other recordable instrument to ensure that the parking spaces on proposed Lot 2 remain designated for use by employees and patrons of the brewpub until such time as the use of the building as a microbrewery is discontinued. If the use ceases at some point in the future, Lot 2 would revert back to a residential building lot.*

4. The applicants proffer the construction of side-loaded garages on Lots 6, 10, 14, 17 and 24 and rear-loaded garages on Lots 28 and 29;

**Staff Analysis:** *Staff believes that side-loaded garages should be required for the corner lots and rear-loaded garages should be required for the through (or "double-frontage") lots. This will minimize the number of driveway entrances to Locust Street and South Loudoun Street, respectively.*

5. The concept plan is amended to show the provision of sidewalks on both sides of E. Pennsylvania Avenue and Stone Jail Street or, at a minimum, the provision of sidewalks



on both sides of E. Pennsylvania Avenue so that customers can safely walk from the on-street parking spaces to the rear entrance of the brewpub.

**Staff Analysis:** *Previous planning commissions and town councils have approved this project with sidewalks on only one side of the two new subdivision streets: Stone Jail Street and East Pennsylvania Avenue (extended). The Planning Commission even went as far as approving a waiver in 2012 when the preliminary subdivision plat was approved. The subdivision ordinance requirement for sidewalks on both sides of the street is intended to enhance walkability and pedestrian safety. Providing sidewalks of both sides of E. Pennsylvania Avenue will ensure the safety of pedestrians walking from their cars to the brewpub while minimizing the need to cross the street multiple times while doing so (or without walking down the side of the street). The Planning Commission did not insist upon sidewalks on both sides of the street (see the Planning Commission's recommendation in the next section).*

6. The term "standby generation" in Proffer #3 is changed to "automatic back-up power for power outages" so that the generator automatically cuts on in the event of a power outage.

**Staff Analysis:** *The applicant believes that this wording change represents a minor difference with respect to semantics and, therefore, has agreed to this recommended rewording of Proffer #3.*

7. The applicants proffer the installation of two (2) streetlights on E. Broad Way across from the applicants' properties that are the subject of this request as shown on the final plans for the East Broad Way Streetscape Project. The streetlights shall be the Spring City Exton LED Luminaire on Meterie Cross Arm as installed elsewhere along E. Broad Way as part of the Town's streetscape project.

**Staff Analysis:** *The applicant has agreed to pay for the installation of two streetlights on E. Broad Way.*

### **Planning Commission Recommendation to Town Council:**

At the meeting on October 21, 2015, the Planning Commission unanimously recommended approval to the Town Council of the attached application to amend the concept plan and proffers for the Keena Subdivision (Case No. LVRZ 2015-0001) with the modifications and recommendations listed in the staff report dated October 7, 2015, except for the following:

1. Consistent with discussions held at the meeting on November 18, 2015 on the Sketch Plan submitted by the applicant dated October 19, 2015, the applicant shall provide temporary off-street parking lot containing eight (8) off-street parking spaces on proposed Lot #2 in order to address off-street parking for employees at the brewpub consistent with staff recommendation #3, subject to recordation of a parking license agreement to ensure

that the parking lot and spaces remain in place and continue to be designated for use by employees of the brewpub until such time as the use of 34 E. Broad Way is discontinued;

2. The applicants will proffer the construction of side-loaded garages on Lots 6, 17 and 24 only, that is, the corner lots on Locust Street; and
3. The applicants will construct a solid fence between the proposed temporary parking lot and the existing dwelling located at 36 E. Broad Way.

The first part of the recommendation above references the October 7, 2015 staff report, which makes the Commission's recommendation consistent with staff's on issues other than the three listed above. The applicant has specifically agreed to all of these modifications with the exception of: (1) sidewalks on both sides of E. Pennsylvania Avenue; and (2) a timetable for submission of plats/plans and construction of proffered improvements. The applicant believes, based on discussions that were held during the two meetings, that the Planning Commission did not intend to recommend sidewalks on both sides of the street or a timetable for submission of plats/plans or construction of proffered improvements. Staff has listened to the recording of the two meetings on the Keena rezoning and confirmed that the Planning Commission did not insist upon sidewalks on both sides of E. Pennsylvania Avenue at either the October 7<sup>th</sup> or October 21<sup>st</sup> meetings, and that the motion they voted on does not specifically resolve the issue of sidewalks other than by making reference to the staff recommendation above. This omission was most likely due to the fact that the Commissioner making the motion and the Planning Commission as a whole felt this issue had already been resolved at the previous meeting. As for the timetable, the Commission discussed but did not specifically resolve the issue at either meeting.